IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

RSA No. 79 of 2007.

Date of Decision: **1st May 2007**.

Smt. Dhebi Devi .....Appellant.

Versus

State of H.P , through Collector, Mandi, H.P. ……Respondent.

Coram

The Hon'ble Mr. Justice Dev Darshan Sud,J.
The Hon'ble Mr. Justice

Whether approved for reporting?[1]

For the Appellant: Mr. G.R. Palsara, Advocate.

For the Respondent: Mr. Rajan Dewan, Addl. A.G.

Dev Darshan Sud, J.

This appeal has been preferred by the plaintiff against the concurrent findings of the learned Courts below whereby the suit of the plaintiff has been dismissed.

The plaintiff had sought a decree of declaration that she is the absolute owner in possession of the land described in the plaint, on the basis of adverse possession. The plaintiff also prayed for a decree of declaration that orders dated 5.5.1987 and 20.7.1990, passed by the Assistant Collector Ist Grade, Thunag and Chachiot at Gohar and the

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

order of the Collector dismissing the appeal ordering the ejectment of the plaintiff-appellant from the land are not binding on the interest of the plaintiff. The learned Trial Court, on the totality of the evidence, both documentary and oral on the record, held that the claim of adverse possession was not established. The learned Trial Court has also referred to the revenue record which did not show the ownership or possession of the plaintiff. The learned Trial Court concluded that the necessary ingredients of adverse possession have not been established and dismissed the suit.

An appeal was filed in the court of learned District Judge. By judgment dated 1.12.2006, the appeal was dismissed holding that the plaintiff had on a previous occasion filed an application for allotment/ regularization of this land in her favour. In such circumstances, it was held that the possession of the plaintiff was permissive. The learned District Judge has also considered the other evidence on the record and rightly concluded that adverse possession has not been established. Learned counsel appearing for the appellant has urged that the findings of the learned Trial Court are not correct and that the evidence on record has been misread misconstrued and misinterpreted. He has also urged that the orders of the Assistant Collector and Collector determining the appellant to be an encroacher are illegal and caused damage to the appellant.

In second appeal, it is not open to this Court to re-appreciate evidence. I have considered the judgments of both the learned courts below and found that the documentary and oral evidence has been considered minutely in detail and there is no perversity in reaching a

particular conclusion. I also find that the possession of the appellant cannot be treated to be adverse to that of the State more especially when the plaintiff are at one point of time applied for regularization of a holding. Hon'ble Supreme Court in **State of Rajasthan** Vs. **Harphool Singh** **(2000)5 SCC 652** held:

> *"So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right/title of the State to immovable property and conferring upon a third –party encroacher title where he had none. The decision in* ***P. Lakshmi Reddy v. L. Lakshmi Reddy*** *adverted to the ordinary classical requirement – that it should be* ***nec vi, nec clam, nec precario-*** *that is the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. It was also observed therein that whatever may be the animus or intention of a person wanting to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required animus. In the decision reported in* ***Secy. of State for India in Council v. Debendra Lal Khan*** *strongly relied on for the respondents, the Court laid down further that it is sufficient that the possession be overt and without any attempt at concealment so that the person against whom time is running, ought if he exercises due vigilance, to be aware of what is happening and if the rights of the Crown have been openly usurped it cannot be heard to plead that the fact was not brought to its notice. In* ***Annasahed Bapusaheb Patil v. Balwant*** *it was observed that a claim of adverse possession being a hostile assertion involving expressly or impliedly in denial of title of the true owner, the burden is always on the person who asserts such a*

claim to prove by clear and unequivocal evidence that his possession was hostile to the real owner and in deciding such claim, the courts must have regard to the animus of the person doing those acts."

In applying the ratio of the judgment, I hold that the appellant has not been able to establish a case for adverse possession. The appeal is therefore dismissed. There shall be no order as to costs.

Learned counsel for the appellant submitted that the appellant may not be ejected save and except in accordance with law. This is a settled principle which is to be followed and does not require any reiteration from this court. Learned counsel further submits that the respondent should consider the case of the appellant for regularization. It would be open to the appellant to approach the respondent for appropriate relief.

The appeal is dismissed with these observations.

(Dev Darshan Sud),
Judge.

1st May, 2007.
(cm)